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EXAMINER

STEPHENS, JACQUELINE F

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Rembert Fertner and Arthur Putzer

Appeal 2009-010157
Application 10/537,882
Technology Center 3700

Before: RICHARD E. SCHAFER, JAMESON LEE, and
SALLY GARDNER LANE, *Administrative Patent Judges.*

SCHAFER, *Administrative Patent Judge.*

DECISION ON APPEAL

Applicants appeal from the Final Rejection of Claims 1-14. 35 U.S.C.
§ 134(a). We have jurisdiction. 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

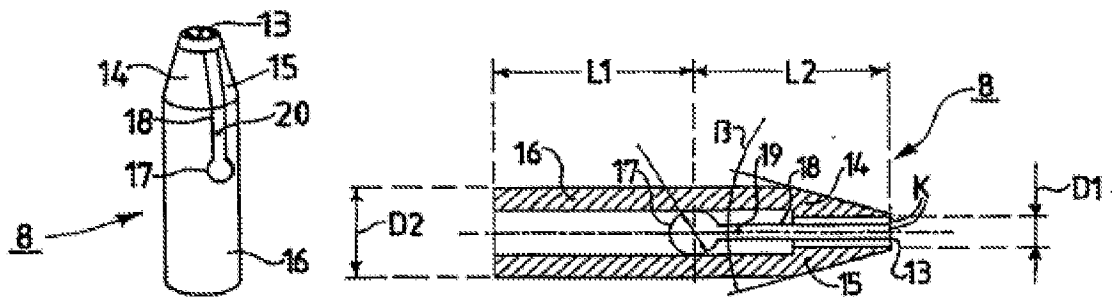
The Examiner has finally rejected Claims 1-14 under 35 U.S.C.
§ 103(a) as obvious over Bryant.¹ App. Br. 3; ² Ans. 2.

¹ U.S. Patent 1,488,376.

² Throughout this decision, we refer to the Appeal Brief submitted September 16, 2008 (“App. Br.”), Examiner’s Answer mailed January 23, 2009 (“Ans.”), and Reply Brief submitted March 17, 2009 (“Reply Br.”). All references to the claims are to the Claims Appendix of the Appeal Brief. App. Br. 7-9. The Examiner has certified those claims as correct. Ans. 3.

Subject Matter of the Invention

Applicants' invention relates to a device for treating and removing impurities found in and around skin pores. Written Description 1, ll. 1-7 and 10-24. The device includes a tip for exerting suction and compression on the skin. Written Description 7, ll. 29-32. Applicants' Figs. 1 and 2, reproduced in part below, illustrate perspective and cross-sectional views of the tip (8). Written Description 5, ll. 19-22.



More particularly, the tip includes at least two end piece sections (14, 15) that define a suction aperture (13). The tip also includes at least two elastic parts (19, 20) situated between the end piece sections that also define the aperture. Written Description 6, ll. 31-34; 7, ll. 7-19. During use, a vacuum hose is inserted into an opening of the tip's base (16) to create suction at the tip's opening. Written Description 6, ll. 6-12 and 18-23. The suction pulls skin through the opening forming a skin protuberance in the tip. Written Description 6, ll. 25-30. The end pieces and elastic parts are arranged such that squeezing the end pieces together radially compresses the suctioned protuberance removing the impurity. Written Description 7, ll. 13-19.

Claim 1 defines Applicants' invention as follows (paragraphing and emphasis added):

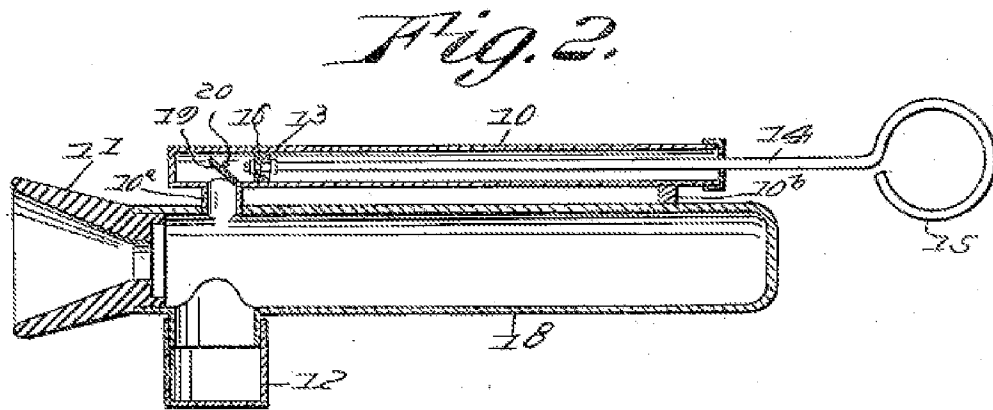
1. A personal care apparatus comprising an air pump having a suction piece and a motor for exerting a suction effect on the human skin,
 - wherein the suction piece is connected to the air pump via an air-transfer duct, and
 - wherein the suction piece has at least one circumferentially defined suction aperture for suction-based interaction with the human skin, and
 - wherein the suction piece in the area of the suction aperture is designed to form a skin protuberance in a suction-based interaction with the skin, and
 - wherein the suction piece has *at least two suction piece sections extending to the suction aperture and defining the suction aperture, said two suction piece sections being radially adjustable and designed to exert a radial force on a skin protuberance formed in a suction-based interaction with the skin*, and
 - wherein the suction piece has at least two sealing parts of elastically deformable design extending to the suction aperture and defining the suction aperture, each sealing part being situated between two mutually adjacent suction piece sections and having an airtight connection to the two mutually adjacent suction piece sections.

App. Br. 7.

OPINION

The Examiner rejected all claims under 35 U.S.C. § 103(a) as unpatentable over the Bryant patent.

Bryant discloses a snake bite poison extractor. Bryant, title. Bryant's Fig. 2, reproduced below, illustrates a cross-sectional view of the extractor. Bryant 1, ll. 27-28.



The extractor has a flared suction piece (11) that is placed onto the skin at the location of a snake bite. A pump chamber (10) evacuates air from a main chamber (18), which creates a vacuum in the suction piece. Bryant 1, ll. 36-79. The suction draws poison from the wound. Bryant 1, ll. 79-82.

The Examiner finds that Bryant's suction piece has two sections: a flared portion; and a base portion inserted in the main chamber. Ans. 5. According to the Examiner, the two sections meet the requirement for "at least two suction piece sections." Ans. 5.

Applicant argues that Bryant does not teach a suction piece having two radially adjustable sections. App. Br. 4-5; Reply Br. 4. We agree.

To the extent Bryant's suction piece is made of rubber (Bryant 1, ll. 43-49), the flared section would inherently be radially adjustable in response to an applied radial force. However, the claims specifically require that there be at least two radially adjustable sections. Accepting the Examiner's argument that the two sections are the flared mouth and the base, the base section would not be radially adjustable.

The Examiner posits that the flare and base sections are radially adjustable because Bryant's suction piece is threaded and can be twisted in the main chamber. Ans. 6. While the twisting movement would affect both

the flared and base portions of Bryant's mouth, twisting is not a radial adjustment. The term "radial" means movement along a radius, i.e., a linear measure of movement from a center.³ Twisting, is a "radian" measurement, i.e., an angular measure of movement around a center.⁴ Bryant does not describe a suction piece having two sections that are "radially adjustable" as that phrase is used in the claims. Absent a teaching of a suction piece having at least two pieces that are radially adjustable or reasoning explaining why Bryant's suction piece should be modified, a prima facie case of obviousness of the subject matter of Claim 1 has not been established.

Like Claim 1, independent Claim 8 requires "two suction piece sections being radially adjustable." The obviousness of the subject matter of Claim 8 has similarly not been established.

We reverse the rejection of Claims 1 and 8 and their respective dependent Claims 2-7, and Claims 9-14.

DECISION

We reverse the rejection of Claims 1-14 under 35 U.S.C. § 103(a) as obvious over Bryant.

REVERSED

KMF

³ "Radial." *Merriam Webster's New Collegiate Dictionary* 951 (1976).

⁴ "Radian." *Merriam Webster's New Collegiate Dictionary* 951 (1976).